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Office of Legislative Counsel

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10 July 1978

Mr. Theodore J. Kazy
Minority Staff Director
Committee on Post Office and Civil Service
House of Representatives
Washington, D.C. 20515

Dear Ted:

In follow-up to our discussion last Friday on provisions in H.R. 11280, the Civil Service Reform legislation, I would like to provide you with some additional information on two provisions: proposed subsection 5402(a) (page 173 of the June 15, 1978, Committee Print) and proposed Title VII ("Labor-Management Relations").

1. Proposed subsection 5402(a) -- "Merit Pay System." As we discussed on 7 July 1978, in our view, the language "as established under chapters 51 and 53 of this title" should be inserted at the end of proposed subsection 5402(a), in order to make clear that the Merit Pay System is applicable only to positions under the Pay Classification Act. Since both CIA and NSA are not under the Pay Classification Act, this amendment would solve our concern that, in being subject to the Merit Pay System, our personnel system would, at least in part, become subject to external monitoring and regulation (by the proposed Office of Personnel Management). This, of course, would change the status quo as regards our present position, based on our statutory authorities, and would therefore be inconsistent with our need for exemptions from H.R. 11280. This amendment could be accompanied by Report language making clear that:

"... As regards those agencies not subject to the Pay Classification Act, in which pay is fixed by administrative action, while not within the merit pay system proposed by chapter 54, it is anticipated that these agencies will follow the principles and procedures of the merit pay system to the maximum extent consistent with their authorities and responsibilities."

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A different, and in our view less desirable, approach to resolve this problem would be to specifically exempt CIA and NSA from the scope of the Merit Pay System. This could be done by inserting the following language at the end of subsection 5402(a), on line 23 of page 173 of the June 15, 1978, Committee Print:

"; Provided that the merit pay system shall not apply to the Central Intelligence Agency or the National Security Agency."

This amendment could be accompanied by Report language along the following lines:

"The Central Intelligence Agency and the National Security Agency shall not be within the proposed merit pay system, based on the unique missions and needs of those agencies pursuant to their operative statutes. It is anticipated, however, that these agencies will adhere to the principles and procedures of the merit pay system to the maximum extent consistent with their authorities and responsibilities set forth in the National Security Act of 1947, as amended (50 U.S.C. 403), the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a et seq.), Pub. L. 86-36, 73 Stat. 63, as amended, and Pub. L. 88-290, 78 Stat. 168, as amended."

2. Proposed Title VII--"Labor-Management Relations. It is essential that intelligence agencies not be subject to this proposed title. We strongly endorse the provision included in the Administration's proposed Title VII, which would exempt FBI, CIA, NSA, and other intelligence agencies (proposed subsection 7162(c)), as we discussed on 7 July 1978.

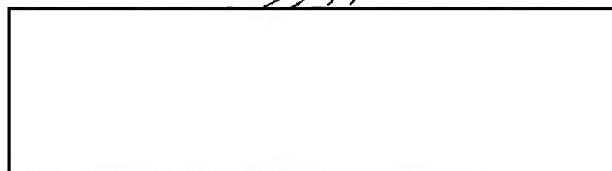
The much narrower intelligence agency exemption provided in paragraph 7112(b)(6), on page 23 of the June 22, 1978, Committee Print of proposed Title VII, is inadequate. This paragraph would exempt from "appropriate" labor "units" employees "engaged in intelligence, investigative, or security functions of any agency which directly affect national security." This formulation, in the first instance, does not specifically exempt agencies from coverage, but only certain employees within agencies. Moreover, only employees engaged in "intelligence ... functions ... which directly affect national security" (emphasis added) are exempted. This language would seem to require that a determination be made as to each employee, in CIA for example, to determine whether his duties "directly affect national security." While the overall mission of CIA and NSA clearly would fit this criteria, disputes might arise as to whether each individual employee's functions "directly affect national security." Because of this potential contradiction between each organization's overall functions and an individual employee's functions, applications of the standard would be difficult and could have the contentious and inequitable result of limiting the activities of some employees but not others. Moreover, if even some employees were

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permitted to form an "appropriate labor unit," the results could severely impact on the ability of intelligence agencies to fulfill their vital missions. Finally, the proposed exemption in paragraph 7112(b)(6) of the Committee Print, unlike the exemption in subsection 7162(c) of the Administration's proposed Title VII, would not extend to the entire Subchapter III on "Federal Service Labor-Management Relations" [or, as the Committee Print is organized, to the entire Title VII, "Federal Service Labor-Management Relations].

We look forward to discussing these and other matters relating to H.R. 11280 with you. Thank you very much for your help.

Sincerely,



Assistant Legislative Counsel

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